

# HOUSE BILL No. 1322

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-8-11.

**Synopsis:** Fire protection districts. Provides that a fire protection district that consists of only one township may be established by the township legislative body instead of the county legislative body.

**Effective:** July 1, 2005.

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**Lutz J**

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January 13, 2005, read first time and referred to Committee on Local Government.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1322

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 36-8-11-4 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A ~~county~~  
3 ~~legislative body may establish fire protection districts~~ **fire protection**  
4 **district may be established** for any of the following purposes:

5 (1) Fire protection, including the capability for extinguishing all  
6 fires that might be reasonably expected because of the types of  
7 improvements, personal property, and real property within the  
8 boundaries of the district.

9 (2) Fire prevention, including identification and elimination of all  
10 potential and actual sources of fire hazard.

11 (3) Other purposes or functions related to fire protection and fire  
12 prevention.

13 (b) Any area may be established as a fire protection district, but one  
14 (1) part of a district may not be completely separate from another part.

15 (c) **Subject to subsection (d), a fire protection district may be**  
16 **established by:**

17 (1) **an ordinance adopted by the county legislative body; or**



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**(2) if the fire protection district consists of only one (1) entire township, a resolution adopted by the township legislative body.**

**(d)** A municipality may be included in a district ~~but~~ only if: it  
**(1) the municipality** consents by ordinance; ~~or unless~~  
**(2)** a majority of the freeholders of the municipality have petitioned to be included in the district.

~~(c)~~ **(e)** Except as provided in subsection ~~(d)~~, **(f)**, the territory of a district may consist of:

- (1)** one (1) or more townships and parts of one (1) or more townships in the same county; or
- (2)** all of the townships in the same county.

The boundaries of a district need not coincide with those of other political subdivisions.

~~(d)~~ **(f)** The territory of a district may consist of a municipality that is located in more than one (1) county.

SECTION 2. IC 36-8-11-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Freeholders who desire the establishment of a fire protection district must initiate proceedings by filing a petition:

- (1)** in the office of the county auditor of the county where the freeholder's land is located; ~~or~~
- (2) with the township legislative body, if the petition states that the proposed district is coterminous with the boundaries of the township.**

**(b)** The petition may also be filed by a municipality under an ordinance adopted by its legislative body:

- (1)** in each county where the municipality is located; ~~or~~
- (2) with the township legislative body, if the municipality is within one (1) township.**

~~(b)~~ **(c)** The petition must be signed:

- (1)** by at least twenty percent (20%), with a minimum of five hundred (500), of the freeholders owning land within the proposed district; or
- (2)** by a majority of those freeholders owning land within the proposed district;

whichever number is less.

~~(c)~~ **(d)** This subsection applies to a district that consists of a municipality located in two (2) counties. The petitions filed in each county as set forth in section 5.1 of this chapter shall be considered parts of one (1) petition. The signature requirement of subsection ~~(b)~~ **(c)** applies to the sum of the signatures on all parts of the petition.

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SECTION 3. IC 36-8-11-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. A petition filed under section 5 of this chapter must state the following:

(1) A name for the proposed district that distinguishes the district from all other political subdivisions within or contiguous to the area included within the district.

(2) A description of the territory to be included, not necessarily by metes and bounds, but sufficiently accurate to inform the county legislative body and to apprise landowners of the possibility of the inclusion of their land within the district. **If the petition is to form a district from only (1) township, a statement that the district will include all the land within the township is a sufficient description.**

(3) A statement of the purposes for which the district is proposed to be established.

(4) A statement of the necessity and urgency of accomplishing the purposes.

(5) A statement that the creation of the district will be conducive to the public health, safety, or welfare, including a summary of the advantages to be derived from the creation of the district.

(6) A statement that the costs and damages of the district will probably be less than the benefits to be derived.

(7) Whether the petition is conditioned upon a grant of federal or state monies, and whether the conditions that are attached to the grant or grants are acceptable if the monies should be offered.

SECTION 4. IC 36-8-11-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) After a petition is filed under section 5 of this chapter:

(1) the county auditor shall present it to the county legislative body; or

**(2) if the petition is to form a district consisting of only one (1) entire township, the township legislative body shall consider the petition;**

at its next regularly scheduled meeting or at a special meeting called for that purpose. Before or at the meeting, the **county or township** legislative body shall determine whether the petition bears the necessary signatures and complies with requirements as to form and content. The legislative body may not dismiss a petition with the requisite signatures because of alleged defects without permitting amendments to correct errors in form or content.

(b) In determining whether the signers of a petition are freeholders, the names as they appear on the tax duplicates are prima facie evidence

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of the ownership of land.

(c) If the **county or township** legislative body determines that the petition conforms to the requirements of this chapter, it may set a date for a public hearing on whether a fire protection district should, as a matter of public policy, be established in the area proposed in the petition. The legislative body may also prepare an ordinance or resolution to establish the district for its consideration, in accordance with applicable laws.

SECTION 5. IC 36-8-11-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. If the petition is dismissed because the county **or township** legislative body finds the evidence does not support it, a new petition to establish a district under this chapter in essentially the same area may not be addressed to the legislative body for a period of two (2) years after the date of the order dismissing the original petition.

SECTION 6. IC 36-8-11-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) Within thirty (30) days after the ordinance or resolution establishing the district becomes final, the county **or township** legislative body shall appoint a board of fire trustees. The trustees must be qualified by knowledge and experience in matters pertaining to fire protection and related activities in the district. A person who:

(1) is a party to a contract with the district; or

(2) is a member, an employee, a director, or a shareholder of any corporation or association that has a contract with the district;

may not be appointed or serve as a trustee. The legislative body shall appoint one (1) trustee from each township or part of a township contained in the district and one (1) trustee from each municipality contained in the district. If the number of trustees selected by this method is an even number, the legislative body shall appoint one (1) additional trustee so that the number of trustees is always an odd number. If the requirements of this section do not provide at least three (3) trustees, the legislative body shall make additional appointments so that there is a minimum of three (3) trustees.

(b) The original trustees shall be appointed as follows:

(1) One (1) for a term of one (1) year.

(2) One (1) for a term of two (2) years.

(3) One (1) for a term of three (3) years.

(4) All others for a term of four (4) years.

The terms expire on the first Monday of January of the year their appointments expire. As the terms expire, each new appointment is for a term of four (4) years.

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(c) If a vacancy occurs on the board, the county **or township** legislative body shall appoint a trustee with the qualifications specified in subsection (a) for the unexpired term.

SECTION 7. IC 36-8-11-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July, and October. The county **or township** legislative body may order that regular meetings be held more frequently.

(b) Special meetings of the board may be called by the chairman or by two (2) trustees, upon written request to the secretary. At least three (3) days before a special meeting, the secretary shall send to all trustees a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if:

(1) the time of the special meeting has been fixed in a regular meeting; or

(2) all trustees were present at a meeting at which a special meeting was called.

SECTION 8. IC 36-8-11-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) At the first regular meeting each year, the trustees of the board shall elect a chairman and vice chairman from their number. The vice chairman shall act as chairman during the absence or disability of the chairman.

(b) A majority of the trustees constitutes a quorum. An action of the board is official, however, only if it is authorized by a majority of the trustees at a regular or properly called special meeting.

(c) Each trustee may receive not more than twenty dollars (\$20) a day for each day devoted to the work of the district. In addition, each trustee may be reimbursed for actual expenses, including traveling expense at a rate equivalent to that provided by statute for state employees. Claims for expense reimbursement must be accompanied by an itemized written statement and approved by a recorded motion of the board.

(d) At the time the county **or township** legislative body initially appoints the board, it shall order where the board will maintain its offices. The offices may not be changed without approval of the legislative body. The board shall arrange for office space and keep a record of all transactions and minutes of all meetings in the office. All records and minutes shall be kept available for public inspection.

SECTION 9. IC 36-8-11-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. (a) The board:

(1) has the same powers and duties as a township executive with

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respect to fire protection functions, including those duties and powers prescribed by IC 36-8-13, although all cooperative and joint actions permitted by that chapter must be undertaken according to this chapter;

(2) has the same powers and duties as a township executive relative to contracting with volunteer firefighting companies, as prescribed by IC 36-8-12 and IC 36-8-13;

(3) shall appoint, fix the compensation, and prescribe the duties of a fiscal officer, secretarial staff, persons performing special and temporary services or providing legal counsel, and other personnel considered necessary for the proper functioning of the district; however, a person appointed as fiscal officer must be bonded by good and sufficient sureties in an amount ordered by the county **or township** legislative body to protect the district from financial loss;

(4) shall exercise general supervision of and make regulations for the administration of the district's affairs;

(5) shall prescribe uniform rules pertaining to investigations and hearings;

(6) shall supervise the fiscal affairs and responsibilities of the district;

(7) may delegate to employees of the district the authority to perform ministerial acts, except in cases in which final action of the board is necessary;

(8) shall keep accurate and complete records of all departmental proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of the district;

(9) shall make an annual report to the executive and the fiscal body of the county **or township** that at least lists the financial transactions of the district and a statement of the progress in accomplishing the purposes for which the district has been established;

(10) shall adopt a seal and certify all official acts;

(11) may sue and be sued collectively by its legal name ("Board of Fire Trustees, \_\_\_\_\_ Fire Protection District"), with service of process made on the chairman of the board, but costs may not be taxed against the members individually in an action;

(12) may invoke any legal, equitable, or special remedy for the enforcement of this chapter or of proper action of the board taken in a court;

(13) shall prepare and submit to the fiscal body of the county **or**

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**township** an annual budget for operation and maintenance expenses and for the retirement of obligations of the district, subject to review and approval by the fiscal body;

(14) may, if advisable, establish one (1) or more advisory committees;

(15) may enter into agreements with and accept money from a federal or state agency and enter into agreements with a municipality located within or outside the district, whether or not the municipality is a part of the district, for a purpose compatible with the purposes for which the district exists and with the interests of the municipality;

(16) may accept gifts of money or other property to be used for the purposes for which the district is established;

(17) may levy taxes at a uniform rate on the real and personal property within the district;

(18) may issue bonds and tax anticipation warrants;

(19) may incur other debts and liabilities;

(20) may purchase or rent property;

(21) may sell services or property that are produced incident to the operations of the district making a fair and reasonable charge for it;

(22) may make contracts or otherwise enter into agreements with public or private persons and federal or state agencies for construction, maintenance, or operations of or in part of the district;

(23) may receive and disburse money; and

(24) may impose a false alarm fee or service charge under IC 36-8-13-4.

(b) Powers granted by this chapter may be used only to accomplish the purpose or purposes as stated in the ordinance or resolution establishing the district. However, an act of the board necessary and proper to accomplish the purposes for which the district is established is not invalid because it incidentally accomplishes a purpose other than one for which the district is established.

SECTION 10. IC 36-8-11-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. (a) The board shall annually budget the necessary money to meet the expenses of operation and maintenance of the district, including repairs, fees, salaries, depreciation on all depreciable assets, rents, supplies, contingencies, bond redemption, and all other expenses lawfully incurred by the district. After estimating expenses and receipts of money, the board shall establish the tax levy required to fund the estimated budget.

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(b) **If a district is established by a county legislative body**, the budget must be approved by the fiscal body of the county, the county board of tax adjustment, and the department of local government finance. **If a district is established by a township legislative body, the budget must be approved by the township legislative body, the county board of tax adjustment, and the department of local government finance.**

(c) Upon approval by the department of local government finance, the board shall certify the approved tax levy to the auditor of the county having land within the district. The auditor shall have the levy entered on the county treasurer's tax records for collection. After collection of the taxes the auditor shall issue a warrant on the treasurer to transfer the revenues collected to the board, as provided by statute.

SECTION 11. IC 36-8-11-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. (a) Proceedings to dissolve a fire protection district may be instituted by the filing of a petition with the county **or township** legislative body that formed the district. If the proceedings are for dissolution of a district to which section 5.1 of this chapter applies, the proceedings may be instituted by the filing of a petition with the primary county or the secondary county, or both.

(b) The petition must be signed:

(1) by at least twenty percent (20%), with a minimum of five hundred (500), of the freeholders owning land within the district; or

(2) by a majority of those freeholders owning land within the district;

whichever is less.

(c) Except as provided in subsection (d), the provisions of section 8 of this chapter concerning a petition to establish a district apply to a dissolution petition.

(d) If the district is established under section 5.1 of this chapter, the provisions of section 5.1 of this chapter apply to a petition to dissolve the district.

(e) Except as provided in subsection (f), a petition against the dissolution of the fire protection district may be presented to the county **or township** legislative body at or after a hearing on the petition to dissolve a district and before the adoption of an ordinance or resolution dissolving the district. If the legislative body finds that it contains the signatures of fifty-one percent (51%) of the freeholders within the district or of the freeholders who own two-thirds (2/3) of the real property within the district, determined by assessed valuation, the

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legislative body shall dismiss the petition for the dissolution of the district.

(f) If a district is established under section 5.1 of this chapter, the provisions of section 9.5 of this chapter apply to a petition to dissolve the district.

(g) If, after the public hearing, the legislative body determines that dissolution should occur, it shall adopt an ordinance dissolving the district. If the district is established under section 5.1 of this chapter, both legislative bodies of the counties containing the district must adopt ordinances dissolving the district after determining in a public hearing that the district should be dissolved.

(h) A dissolution takes effect three (3) months after the later of the adoption of the ordinance under subsection (g) or the payment of the district's debts and liabilities, including its liabilities under IC 34-13-2 and IC 34-13-3. The property owned by the district after payment of debts and liabilities shall be disposed of in the manner chosen by the county legislative body or county legislative bodies **or the township legislative body**. Dissolution of a district does not affect the validity of any contract to which the district is a party.

(i) A person aggrieved by a decision made by the county legislative body or county legislative bodies **or the township legislative body** under this section may, within thirty (30) days, appeal the decision to the circuit court for any county in which the district is located. The appeal is instituted by giving written notice to each:

(1) county legislative body; **or**

(2) **if the district consists of only one (1) township, the township legislative body;**

within which the district is located and filing with the circuit court clerk a bond in the sum of five hundred dollars (\$500), with surety approved by the legislative body or legislative bodies **or the township legislative body**. The bond must provide that the appeal will be duly prosecuted and that the appellants will pay all costs if the appeal is decided against them. When an appeal is instituted, the county legislative body or county legislative bodies **or the township legislative body** shall file with the circuit court clerk a transcript of all proceedings in the case, together with all papers filed in the case. ~~The~~ **A county or township legislative body or county legislative bodies** may not take further action in the case until the appeal is heard and determined. An appeal under this subsection shall be heard by the circuit court without a jury. Change of venue from the judge may be granted, but change of venue from the county may not be granted.

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